

REMARKS:

Claims 1-28 are currently pending in the application.

Claims 1, 3-11, 13-20, and 22-28 stand rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,460,038 to Khan *et al.* (“Khan”).

Claims 2, 12, and 21 stand rejected under 35 U.S.C. § 103(a) over Khan in view of U.S. Patent No. 5,931,900 to Notani *et al.* (“Notani”).

The Applicants respectfully submit that all of the Applicants arguments are without prejudice or disclaimer. In addition, the Applicants have merely discussed example distinctions from the cited prior art. Other distinctions may exist, and as such, the Applicants reserve the right to discuss these additional distinctions in a future Response or on Appeal, if appropriate. The Applicants further respectfully submit that by not responding to additional statements made by the Examiner, the Applicants do not acquiesce to the Examiner's additional statements. The example distinctions discussed by the Applicants are considered sufficient to overcome the Examiner's rejections.

REJECTION UNDER 35 U.S.C. § 112:

The Applicants thank the Examiner for withdrawing the rejection of Claims 1, 5, 11, and 20 under 35 U.S.C. § 112.

REJECTION UNDER 35 U.S.C. § 103(a):

Claims 1, 3-11, 13-20, and 22-28 stand rejected under 35 U.S.C. § 103(a) over Khan over the Examiner's Official Notice.

Claims 2, 12, and 21 stand rejected under 35 U.S.C. § 103(a) over Khan in view of Notani.

The Applicants respectfully submit that *Khan*, *Notani*, or the Examiner's Official Notice, either individually or in combination, fail to disclose, teach, or suggest each and every element of Claims 1-28. Thus, the Applicants respectfully traverse the Examiners obvious rejection of Claims 1-28 under 35 U.S.C. § 103(a) over the proposed combination of *Khan*, *Notani*, or the Examiner's Official Notice, either individually or in combination.

The Proposed *Khan*-Official-Notice Combination Fails to Disclose, Teach, or Suggest Various Limitations Recited in Applicants Claims

The Applicants respectfully submit that in the 1 May 2007 Non-Final Office Action, the Examiner makes many equations between the prior art and the present application, of which the Applicants respectfully disagree. The Examiner's arguments will be addressed in the order in which they are presented in the 1 May 2007 Office Action.

The Applicants further respectfully submit that, in contrast to the Examiner's assertion in the 1 May 2007 Office Action, *Khan* does not disclose a:

"a [global, see below] directory for providing a plurality of buyers (see, for example, references to users (*pl.*) as in Fig. 5, items 512, 514; users (*pl.*) that buy, such as in Fig. 10, are *buyers*.)"

For example, the Examiner fails to state precisely the manner in which *Khan* purportedly discloses a "global content directory." Nonetheless, it must be pointed out that such a "global directory" is nowhere disclosed in *Khan*, no matter by what label one may choose to call it.

In the 1 May 2007 Office Action, the Examiner relies on elements 512 and 514 of Fig. 5 in *Khan* to support the supposed proposition that *Khan* discloses a "global content directory." In fact, Fig. 5, item 512 discloses "which users have selected to receive updates from the *particular* linked website."

The Applicants respectfully submit that the Examiner change his position on this point because the event of a user selecting to receive updates from a "*particular* linked

website” in no way relates to, or is even suggestive of a “global content directory”. Accordingly, there is no equivalence between a “*particular* linked website” and a “global content directory”. Even if, as the Examiner argues, labels “carry little or no patentable weight,” it is clear in the present application that, no matter by what label what one chooses to call the respective terms in *Khan* and the present application, there is simply no equivalence between the event of a user being updated with information from websites that he has previously selected and bookmarked, as in *Khan*, and a “global content directory” already populated with sellers, as exists in the present application.

In another example, Fig. 5, item 514 discloses “transmitting the updates to the particular users who have selected that particular interval”. Once again, item 514 in no way discloses a “global content directory,” but rather deals with individual “*particular* users” selecting updates from “*particular* websites.” In fact, it must be pointed out that any link to any website in *Khan* must be created manually or otherwise by a user, and is not provided within the context of any “global content directory”. Therefore, for all of the foregoing reasons, *Khan* fails to disclose a “global content directory”, but rather only allows users to access individual particular websites that a user has previously selected, as noted at length below.

Accordingly, whereas *Khan* allows users to select products or receive product updates from **only** those websites that have previously been selected and bookmarked - a tedious task - the present application allows users to conveniently select products from a **global** content directory that is provided.

By way of further explanation, independent Claim 1 recites:

An electronic commerce system for facilitating an electronic commerce transaction, the electronic commerce system comprising:

a global content directory for providing a plurality of buyers access to a distributed plurality of seller databases, each seller database associated with a corresponding seller and different from other seller databases in the distributed plurality of seller databases, the global content directory comprising:

a directory structure comprising a plurality of product classes organized in a hierarchy, each product class categorizing a

plurality of products and defining one or more attributes of the products categorized in the product class;

one or more pointers associated with each product class in the plurality of product classes, each pointer identifying the seller database in the distributed plurality of seller databases in which product data enabling a product transaction is stored for products associated with the product class, the seller database identified by the pointer being associated with its corresponding seller and being distinct from the other seller databases in the distributed plurality of seller databases; and

a search interface operable to communicate a search query for product data to the one or more seller databases identified by the one or more pointers associated with the selected product class, each seller database associated with its corresponding seller and distinct from the other seller databases in the plurality of seller databases;

a selection of a product class received from one of the plurality of buyers;

in response to the selection of the product class received from one of the plurality of buyers, communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class; and

in response to communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class, receive address information associated with a seller database associated with a seller of the selected product, the seller database including product data for the selected product, the address information enabling one of the plurality of buyers to communicate with the seller associated with the seller database to conduct a commerce transaction relating to the selected product. (Emphasis added)

In addition, *Khan* or the Examiner's Official Notice either individually or in combination, fail to disclose each and every limitation of independent Claims 11, and 20.

The Applicants respectfully submit that the Examiner has mischaracterized the Applicants claimed limitation regarding "in response to the selection of the product class received from one of the plurality of buyers" and further mischaracterized the equation involving "buyer queries" in *Khan*. In particular, the limitation here at issue within the present application relates to "communicating a **search query** for product data **to one or more seller databases**" *in response to* "a selection of a product class received from one of a plurality of buyers". However, the examples relied upon by the Examiner relate to "querying the user." (See Fig. 4, item 402; Fig. 5, item 502; Fig. 6, item 602).

As a way of an example distinction, and not by way of limitation, the query at issue in the present application is ***directed to a seller database***, whereas the query at issue in *Khan* is ***directed to a user***. Because the queries in the present application are directed to different entities than the entities in *Khan*, the “search query” limitation, as present in the instant application, is not found in *Khan*. Therefore, it is clear that the limitation “communicating a search query for product data to one or more seller databases” is ***not*** taught, suggested, or even hinted at in *Khan*.

The Applicants further respectfully point out that the Examiner has attempted to create equivalency where none exists with regard to the manner in which access is provided to a “distributed plurality of seller databases (see, for Example, at least Fig. 10, plurality of sellers, such as LLBEAN, GAP, DELTA AIRLINES). (See 1 May 2007 Office Action, Page 2).

In particular, in the 1 May 2007 Office Action, the Examiner notes that access in *Khan* is provided in the following manner: “access (***via links***) to a distributed plurality of seller databases”. Even assuming, *arguendo*, that the present application and *Khan* both involve access to a distributed plurality of seller databases, which Applicants do not admit; Applicants respectfully submit that the Examiner has disregarded the completely different manners in which access to seller databases is achieved in *Khan* and in the present application.

For example, in *Khan*, access to a distributed plurality of seller databases occurs ***via links***, and access occurs ***only*** to those sites for which a user has previously selected bookmarks. In contrast to the disclosure of *Khan*, the instant application involves “a global content directory for providing a plurality of buyers ***access***”. Therefore, access to a distributed plurality of seller databases in *Khan* occurs ***via links***, whereas access to a distributed plurality of seller databases in the present application occurs via a “***global content directory***”. Accordingly, as can be seen from the foregoing, the manners in which access is provided in *Khan* and the present application are completely different, showing not only that *Khan* fails to disclose each and every

limitation of the present application, but also generally showing just how different the invention of *Khan* is from that of the present application.

On Page 3 of the 1 May 2007 Office Action, the Examiner asserts that Applicants claim limitation of “each pointer identifying the seller databases in the distributed plurality of seller databases”, is disclosed in *Khan*. To support this reasoning, the Examiner relies upon Fig. 10, item 1008. (See Page 3 of 1 May 2007 Office Action).

The Applicants respectfully submit that Fig. 10, item 1008 fails to disclose, teach, or suggest the limitation of “each pointer identifying the seller database”. For example, Applicants claim limitation that “each pointer identifying the seller databases” provides that **every single** pointer **must** identify a seller database. It is clear that independent Claim 1 **requires** that “each pointer identify[ing] the seller databases”. Nonetheless, this limitation is clearly absent from *Khan* for at least the reason that, in Fig. 10, item 1008, each and every pointer **does not** identify a seller database. Rather, in *Khan*, Fig. 10, item 1008, pointers may point not only to seller databases, but also to general informational databases, such as Lonely Planet’s “July Newsletter.” Clearly, Lonely Planet’s “July Newsletter” is **not** a “seller database.”

Accordingly, since the present application provides that “**each pointer**” identify a seller database, whereas *Khan* **only allows that some pointers** identify a seller database, each and every limitation of the present application is clearly not found in *Khan*.

The Applicants further respectfully submit that the Examiner has erroneously concluded, referring to *Khan*, that “e.g. travel class includes different sellers associated with the travel class.” (1 May 2007 Office Action, Page 4). However, assuming, *arguendo*, that in the present application the *travel class* “includes different sellers associated with the travel class,” due to the global content directory feature discussed above, the same is not true in *Khan*. Specifically, in *Khan*, as noted above, a product class may **only** include those websites for which a user has previously created bookmarks. Accordingly, in *Khan*, a given product class may have only one seller listed, or it may have multiple sellers listed, or it may have **zero** sellers listed, depending

upon the number of websites that a user has previously bookmarked for any given product class. Therefore, a product class in *Khan* does not necessarily “include[s] different sellers.”

The Applicants further respectfully submit that *Khan* fails to teach or suggest independent Claim 1 limitation “***in response to communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class, receive address information associated with a seller database associated with a seller of the selected product, the seller database including product data for the selected product, the address information enabling one of the plurality of buyers to communicate with the seller associated with the seller database to conduct a commerce transaction relating to the selected product.***” The Office Action points to column 10, lines 27 through column 11, line 28 of *Khan* as teaching the limitation of “***communicate address information associated with a seller database associated with a seller of the selected product, the seller database including product data for the selected product, the address information enabling one of the plurality of buyers to communicate with the seller associated with the seller database to conduct a commerce transaction relating to the selected product.***” However, as noted above, this passage of *Khan* fails to teach or suggest this limitation.

The processes detailed in *Khan* involve a user visiting a website, creating a bookmark and programming the bookmark to perform certain functions in the future based on user specified criteria. *Khan* fails to teach or suggest a search interface for a global content directory wherein the user selects a product from the global content directory, the selection being sent from the search interface to the seller database as part of a search query. And, in response to sending this query, the user receives information back from the seller database. Instead, *Khan* merely teaches programming a bookmark to generate information or notices at preprogrammed times. *Khan* fails to teach or suggest generating this information or notice in response to the user selecting the product from the global content directory. Thus, *Kahn* fails to teach or suggest the limitation “***in response to communicating a search query for product data to one or more seller databases***

identified by one or more pointers associated with the selected product class, receive address information associated with a seller database associated with a seller of the selected product, the seller database including product data for the selected product, the address information enabling one of the plurality of buyers to communicate with the seller associated with the seller database to conduct a commerce transaction relating to the selected product.”

The cited passage of *Khan* merely teaches programmable bookmarks. A user visits a webpage, creates a bookmark, wherein the bookmark is programmable. The bookmark may be programmed to have an alarm. The user chooses a time in the future or a time interval at which the user wishes to revisit the website. At the appointed time, the user is notified or reminded to revisit the website. Additionally, the bookmark can be programmed to publish content updates to the user. In such a case, the user is notified periodically of updates to the website. Other programmable features of the bookmark are detailed in other portions of *Khan*. However, all these passages of *Khan* fail to teach or suggest the limitation of “*in response to communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class, receive address information associated with a seller database associated with a seller of the selected product, the seller database including product data for the selected product, the address information enabling one of the plurality of buyers to communicate with the seller associated with the seller database to conduct a commerce transaction relating to the selected product.”*

The Applicants respectfully submit that *Khan* does not disclose, teach, or suggest independent Claim 1 limitations regarding “*in response to the selection of the product class received from one of the plurality of buyers, communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class.*” Specifically, the Office Action points to elements 402, 502, and 602 of Figures 4, 5, and 6 of *Khan* as teaching “*in response to the selection of the product class received from one of the plurality of buyers.*” (See Page 3 of 1 May 2007 Office Action). Nevertheless, elements 402, 502, and 602 of

Figures 4, 5, and 6 of *Khan* do not teach the “***in response to the selection of the product class received from one of the plurality of buyers***”, as recited in independent Claim 1. Instead, element 402 teaches that a user is asked a particular date and time to be reminded to visit a website linked to the selected bookmark. In addition, the user, in *Khan*, is not asked anything about a product and the user’s response has nothing to do with a product or the user making a product selection from a global content directory. Rather, the user, in *Khan*, is merely reminded to visit a particular website in the future.

Element 502 teaches that a user is queried as to whether the user would like to be notified of updates to the website and a time interval for receiving updates for the website. Again, the query issued to the user, in *Khan*, ***has nothing do with any product***, but rather the query is merely provided for being notified of an update to the website. These updates, regardless of what the update contains, are sent to the user and are ***not tied to a product; rather they are tied to the website***. Thus, the updates or generating the updates are not equivalent to a user making a product selection from a global content directory. Element 602 teaches a “pulled update” feature, wherein a user is asked for keywords related to website. When the keyword is detected on the website, the user, in *Khan*, is notified that the word now appears on the webpage. Thus, the updates or generating the updates are not equivalent to a user making a product selection from a global content directory. Therefore, for at least the reasons set forth above, *Khan* does not teach, suggest, or even hint at “***in response to the selection of the product class received from one of the plurality of buyers***,” as recited in independent Claim 1.

Furthermore, looking at Figure 3 of *Khan*, elements 402, 502, and 602 are performed when a bookmark is created. The bookmark in *Khan*, as noted above, is merely a link to a website. However, the limitations of independent Claim 1 recite “***in response to the selection of the product class received from one of the plurality of buyers***.”

In contrast, as noted above, a website is not a product class. In addition, ***creating a bookmark to a website, in Khan, is not the same as a user selecting a product class from the global content directory***.

Thus, even if any of elements 402, 502, or 602 could somehow be construed as buyer queries, which they are not, they are clearly not, elements 402, 502, or 602 do not teach, suggest, or even hint at a selection of product class as they are performed in response to the creation of a bookmark, or link, to a website. Thus, as elements 402, 502, or 602 are performed in response to the creation of a bookmark, or link, to a website, it follows that elements 402, 502, or 602 cannot be equivalent to the selection of a product class (from the global content directory) from one of the plurality of users. Therefore, for at least the reasons set forth above, *Khan* does not teach, suggest, or even hint at "***in response to the selection of the product class received from one of the plurality of buyers,***" as recited in independent Claim 1.

Furthermore, while the Office Action of 1 May 2007 separates the feature of "***in response to the selection of the product class received from one of the plurality of buyers, communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class,***" into two parts in order to teach the limitation, none of the passage cited by the Office Action disclose, teach, or suggest communicating a search query for product data in response to the selection of the of the product class (form the global content directory) by a buyer. Rather, the Office Action seems to cite to passages that allegedly teach a buyer making a product query and a passage that allegedly shows results from a query. Applicants respectfully disagree with the Office Action and have argued that none of the cited passages disclose, teach, or suggest a buyer making a query about product due to the ***selection of the product from a global content directory*** or displaying results of a communicated product query. However, even if the passages cited by the Office Action are assumed to teach a buyer generating a query and the results of a query being shown, ***nowhere is it shown that a product query for product data is sent to a seller database in response to a selection of the that product by the buyer from the global content directory.***

Additionally, the Final Office Action States that Figure 10 teaches "***communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class,***" as

Figure 10 allegedly teaches showing the results of a search query for product data, such as cargo pants and a special fare, and therefore a query must have been communicated. The Applicants respectfully disagree. Figure 10 neither teaches “**communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class**,” nor the results of a search query for product data. As shown in Figure 10, the cargo pants notification and special fares notification are displayed as part of the “service delivery feature”. This feature is explained in greater detail in column 13, line 23 – column 14, line 7 and Figure 9. As taught by *Khan*, according to this service, a user is queried as to whether the user wants to receive sales and marketing information from the website. If so, *the user*, in *Khan*, is automatically notified of any and all such information. ***Thus, the notification or result displayed in Figure 10 is due to the user signing up to receive marketing and sales updates for the entire website.*** *Khan* does not teach, suggest, or even hint at an indication that the marketing and sales data is restricted to a specific selected product class, as recited in independent Claim 1. Thus, the information regarding cargo pants and special fares displayed in Figure 10 is not a search result for product data for a selected product class.

The Applicants further respectfully submit that *Khan* does not disclose, teach, or suggest independent Claim 1 limitations regarding “**a directory structure comprising a plurality of product classes organized in a hierarchy, each product class categorizing a plurality of products and defining one or more attributes of the products categorized in the product class.**” The Office Action states that *Khan* teaches a global content directory even though it does not use this term, as labels are functionally related to the substrate of the article of manufacture and that labels themselves carry little or no patentable weight. Through-out the Office Action, directory headers such as “shopping,” “travel,” and “finance” are cited as being allegedly equivalent to the term “product class,” as used in independent Claim 1 of the present application. Figure 10 does show these terms (i.e. “shopping,” “travel,” and “finance”) arranged in a directory in hierarchical order. However, ***merely arranging words in a directory in hierarchical order does not make them equivalent to the term product class,*** as recited in independent Claim 1. Instead, independent Claim 1 provides “**each**

product class categorizing a plurality of products and defining one or more attributes of the products categorized in the product class”. Khan fails to disclose, teach, or suggest “*each product class categorizing a plurality of products and defining one or more attributes of the products categorized in the product class*”, as recited in independent Claim 1.

As shown in Figure 10 of *Khan*, the category “Shopping” has list of bookmarks, which are links to a websites, for the websites LL Bean, Gap, and LandsEnd. The Applicants are unaware of how “shopping” is a product or product class and how “shopping” categorizes a plurality of products and defines one or more attributes of the products categorized in the product class. Furthermore, how is LL Bean, Gap, and LandsEnd a “product?” Also, on page 3, the Office Action of 1 May 2007 states that bookmarks are pointers. Thus, at best, the directory structure taught by *Khan* and illustrated in Figure 10 of *Khan* shows a set of pointers arranged in certain categories, *but does not include or is not even related to a “directory structure comprising a plurality of product classes organized in a hierarchy, each product class categorizing a plurality of products and defining one or more attributes of the products categorized in the product class”*. Thus, for at least the reasons set forth above, the Applicants respectfully submit that the equations forming the foundation of the Examiner’s comparison between *Khan* and independent Claim 1 cannot be made. The Applicants further respectfully submit that these distinctions alone are sufficient to patentably distinguish independent Claim 1 from *Khan*.

The Applicants still further respectfully submit that the Examiner’s Official Notice fails to cure the acknowledged deficiencies in *Khan*. The Examiner’s Official Notice fails to disclose, teach, or suggest independent Claim 1 limitations regarding “*in response to the selection of the product class received from one of the plurality of buyers, communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the selected product class,*” and “*a directory structure comprising a plurality of product classes organized in a hierarchy, each product class categorizing a plurality of products and defining one or more attributes of the products categorized in the product class.*”

Therefore, for at least the reasons set forth above, the Applicants respectfully submit that *Khan* or the Examiner's Official Notice, either individually or in combination, fails to disclose, teach, or suggest each and every limitation recited in independent Claim 1.

The Proposed *Khan*-Official-Notice Combination Fails to Disclose, Teach, or Suggest Various Limitations Recited in Applicants Claims

The Applicants respectfully maintain that *Khan* or the Examiner's purported Official Notice on Page 6 of the 1 May 2007 Office Action, either individually or in combination, fails to disclose, teach, or suggest each and every element of independent claims 1, 11, and 20. Thus, the Applicants respectfully maintain the traverse the Examiner's obvious rejection of independent claims 1, 11, and 20 under 35 U.S.C. § 103(a) over the proposed combination of *Khan* and the Examiner's Official Notice, either individually or in combination.

The Applicants further respectfully maintain that the Applicants are confused as to what the Examiner is intending to teach by the Official Notice or even the extent in which the Examiner is taking Official Notice. ***The Applicants respectfully request clarification as to the subject matter for which the Examiner is taking Official Notice. The Applicants respectfully traverse the Official Notice because the asserted facts, as best understood by the Applicants, are not supported by substantial documentary evidence or any type of documentary evidence and appear to be the Examiner's opinions formulated using the subject Application as a template, which constitutes impermissible use of hindsight.*** Furthermore, under these circumstances, ***it is inappropriate for the Examiner to take Official Notice without documentary evidence to support the Examiner's conclusion.*** (See MPEP § 2144.03). ***The Applicants respectfully request the Examiner to produce authority for the Examiner's purported Official Notice.***

Only "in limited circumstances," is it "appropriate for an examiner to take official notice of facts not in the record or to rely on common knowledge in making a rejection". (MPEP § 2144.03). "Official notice unsupported by documentary evidence ***should only be taken by the examiner*** where the facts asserted to be well-known, or to be common

knowledge in the art are ***capable of instant and unquestionable demonstration as being well-known***. With respect to the subject Application, ***the Examiner's statement*** that "different sellers sell different products and services", ***is not capable of instant and unquestionable demonstration as being well-known or even related to the subject Application.*** (14 September 2006 Office Action, Page 11). As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be '***capable of such instant and unquestionable demonstration as to defy the dispute***' (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 U.S.P.Q. 6 (C.C.P.A. 1961))." (MPEP § 2144.03(A)). (Emphasis Added).

"It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. Zurko, 258 F.3d at 1385, 59 USPQ2d at 1697. (Emphasis Added). As the court held in Zurko, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.* at 1385, 59 USPQ2d at 1697. See also *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002)." (MPEP § 2144.03(A)). "Ordinarily, there must be some form of evidence in the record to support an assertion of common knowledge. See *Lee*, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002); *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (holding that ***general conclusions concerning what is "basic knowledge" or "common sense" to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection***). The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. See *Soli*, 317 F.2d at 946, 37 USPQ at 801; *Chevenard*, 139 F.2d at 713, 60 USPQ at 241. The applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice and be allowed to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made." (MPEP § 2144.03(B)). (Emphasis Added).

With respect to the subject Application, the Examiner submits as documentary evidence for the allegation that different sellers sell different products and services and refers to Figure 4A of U.S. Patent No. 7,092,892 to Sobalvarro *et al.* (“Sobalvarro”). However, the Examiner’s conclusory statement that “different sellers sell different products and services”, ***does not adequately address the issue that this statement is considered to be common knowledge, well-known in the art, or even related to the subject Application.*** The Applicants respectfully submit the following statement, to further explain why the Examiner’s above noticed statement is not considered to be common knowledge or well-known in the art.

First, it is not clear what the Examiner means by “***different sellers sell different products***” (i.e. what “***different sellers***” is the Examiner referring to and to what extent does the Examiner purport “***selling different products***” applies to the subject Application). In fact, the limitations recited in independent claim 1 are directed to “***a global content directory for providing a plurality of buyers access to a distributed plurality of seller databases***” which are “associated with a corresponding seller and ***distinct from other seller databases in the distributed plurality of seller databases***”. It is not clear how the Examiner’s Official Notice that “***different sellers sell different products***” relates to the “***distributed plurality of seller databases***” or how it relates to “***providing a plurality of buyers access to a distributed plurality of seller databases***” or even how it is “***distinct from other seller databases in the distributed plurality of seller databases***”.

Second, it is not clear how the Examiner’s documentary evidence overcomes the presumption that “different sellers sell different products and services” is not considered to be common knowledge, well-known in the art. For example, in Figure 4A, Sobalvarro merely provides for an operator to view item descriptions for an inventory list, these items may be a product or a service. The operator in Sobalvarro may describe the items as having certain attributes. Therefore, according to Sobalvarro, an operator may view and describe an item which may be a product or service, but does not include, involve, or even relate to a “***global content directory for providing a plurality of buyers access to a distributed plurality of seller databases***”, each seller database associated with a

corresponding seller and *distinct from other seller databases in the distributed plurality of seller databases*”, as recited in independent claim 1.

Third, as explained above, the Examiner’s statement that “**different sellers sell different products**” is not considered to be common knowledge or well-known in the art or even related to the subject Application. The Applicants respectfully submit that the “**global content directory**” recited in independent claim 1 is for “**providing a plurality of buyers access to a distributed plurality of seller databases**” and each seller database is associated with a corresponding seller and each seller database is “**distinct from other seller databases in the distributed plurality of seller databases**”. Thus, the Applicants further respectfully submit that the equations forming the foundation of the Examiner’s comparison between the Examiner’s Official Notice and independent claim 1 cannot be made.

Fourth, there is simply no disclosure, teaching, or suggestion in *Khan, Sobalvarro*, or the Examiner’s Official Notice of a “**global content directory for providing a plurality of buyers access to a distributed plurality of seller databases**” which are “associated with a corresponding seller and **distinct from other seller databases in the distributed plurality of seller databases**”.

The Applicants respectfully submit that the documentary evidence provided by the Office Action mischaracterizes the Applicants invention and does not support the Official Notice taken by the Examiner. In addition, the asserted fact “that **different sellers sell different products and services**”, is not capable of “instant and unquestionable” demonstration as being well-known. **The Applicants respectfully request the Examiner to produce actual authority for the Examiner’s statement** “that **different sellers sell different products and services**”, is old and well known **and that this relates to the subject Application**.

The Applicants further submit that **the Applicants have adequately traversed the Examiner’s assertion of Official Notice** and direct the Examiner’s attention to the pertinent text of the MPEP, which states:

If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). (MPEP § 2144.03(C)).

Thus, if the Examiner continues to maintain the rejection of independent claims 1, 11, and 20 based on the Examiner's Official Notice, ***the Applicants respectfully request that the Examiner provide documentary evidence*** as necessitated by MPEP § 2144.03(C). Furthermore, if the Examiner is relying on personal knowledge to support the finding of what is known in the art, ***the Applicants further request that the Examiner provide an Affidavit or Declaration setting forth specific factual statements and explanation to support the finding*** as further necessitated by MPEP § 2144.03(C).

The Proposed *Khan-Notani* Combination Fails to Disclose, Teach, or Suggest Various Limitations Recited in Applicants Dependent Claims 2, 12, and 21.

The Applicants respectfully submit that *Khan* or *Notani*, either individually or in combination, fails to disclose, teach, or suggest each and every element of dependent Claims 2, 12, and 21. Thus, the Applicants respectfully traverse the Examiner's obvious rejection of dependent Claims 2, 12, and 21 under 35 U.S.C. § 103(a) over the proposed combination of *Khan* and *Notani*, either individually or in combination.

Claims 2, 12, and 21 depend from independent Claims 1, 11, and 20, respectively. As argued above with respect to independent Claim 1, *Khan* fails to disclose, teach, or suggest all the limitations of independent Claim 1. *Notani* fails to cure the acknowledged deficiencies of *Khan*. *Notani* fails to disclose, teach, or suggest the independent Claim 1 limitations including "***in response to the selection of the product class received from one of the plurality of buyers, communicating a search query for product data to one or more seller databases identified by one or more pointers associated with the***

selected product class,” and “a directory structure comprising a plurality of product classes organized in a hierarchy, each product class categorizing a plurality of products and defining one or more attributes of the products categorized in the product class”. In addition, the Office Action fails to cite to any portion of *Notani* as teaching the limitations recited in independent Claim 1. Thus, dependent Claims 2, 12, and 21 are considered patentably distinguishable over the combination of *Khan* and *Notani*.

The Applicants Claims are Patentable over the Proposed *Khan*-Official-Notice-*Notani* Combination

The Applicants respectfully submit that independent Claims 11 and 20 include limitations similar to those discussed above in connection with independent Claim 1. Thus, independent Claims 11 and 20 are considered patentably distinguishable over *Khan*, *Notani*, or the Examiners Official Notice for at least the reasons discussed above in connection with independent Claim 1.

With respect to dependent Claims 2-10, 12-19, and 21-28: Claims 2-10 depend from independent Claim 1; Claims 12-19 depend from independent Claim 11; and Claims 21-28 depend from independent Claim 20. As mentioned above, each of independent Claims 1, 11, and 20 are considered patentably distinguishable over the proposed combination of *Khan*, *Notani*, and the Examiner’s Official Notice. Thus, dependent Claims 2-10, 12-19, and 21-28 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

For at least the reasons set forth herein, the Applicants submit that Claims 1-28 are not rendered obvious by the proposed combination of *Khan*, *Notani*, or the Examiner’s Official Notice. The Applicants further respectfully submit that Claims 1-28 are in condition for allowance. Thus, the Applicants respectfully request that the rejection of Claims 1-28 under 35 U.S.C. § 103(a) be reconsidered and that Claims 1-28 be allowed.

THE LEGAL STANDARD FOR OBVIOUSNESS REJECTIONS UNDER 35 U.S.C. § 103:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, ***there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.*** Second, there must be a reasonable expectation of success. Finally, ***the prior art reference*** (or references when combined) ***must teach or suggest all the claim limitations.*** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and ***not based on applicant's disclosure.*** *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); M.P.E.P. § 2142. Moreover, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); M.P.E.P. § 2143.03.

With respect to alleged obviousness, ***there must be something in the prior art as a whole to suggest the desirability,*** and thus the obviousness, of making the combination. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561 (Fed. Cir. 1986). In fact, the absence of a suggestion to combine is dispositive in an obviousness determination. *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573 (Fed. Cir. 1997). The mere fact that the prior art can be combined or modified does not make the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990); M.P.E.P. § 2143.01. The consistent criterion for determining obviousness is whether the prior art would have suggested to one of ordinary skill in the art that the process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art. Both the suggestion and the expectation of success must be founded in the prior art, not in the Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894 (Fed. Cir. 1988); M.P.E.P. § 2142.

A recent Federal Circuit case makes it clear that, in an obviousness situation, the prior art must disclose each and every element of the claimed invention, and that any motivation to combine or modify the prior art must be based upon a suggestion in the prior art. *In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). Conclusory statements regarding common knowledge and common sense are insufficient to support a finding of obviousness. *Id.* at 1434-35.

CONCLUSION:

In view of the foregoing remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

Although the Applicants believe no fees are deemed to be necessary; the undersigned hereby authorizes the Director to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777**. If an extension of time is necessary for allowing this Response to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777**.

Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.

Respectfully submitted,

31 July 2007
Date

/Steven J. Laureanti/signed
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